



UTAH STATE SENATE

UTAH STATE CAPITOL COMPLEX • WEST OFFICE BUILDING, SUITE W115
P.O. BOX 145115 • SALT LAKE CITY, UTAH 84114-5115 • (801) 538-1035

February 21, 2007

Mr. President:

The Judiciary, Law Enforcement, and Criminal Justice Committee reports a favorable recommendation on **3rd Sub. H.B. 86**, PENALTIES FOR SEXUAL OFFENSES AND CHILD KIDNAPPING, by Representative C. Wimmer, with the following amendments:

1. *Page 1, Lines 1 through 4:*

1 PENALTIES FOR SEXUAL
2 OFFENSES AND ~~{CHILD}~~ KIDNAPPING
3 2007 GENERAL SESSION
4 STATE OF UTAH

2. *Page 1, Lines 15 through 18:*

- 15 ▶ increases the base penalties for certain sexual offenses and ~~{child}~~
kidnapping offenses ;
16 ▶ provides for greater penalties for certain sexual offenses and ~~{child}~~
kidnapping offenses when
17 the defendant causes serious bodily injury to another during the course of the
18 commission of the offense;

3. *Page 2, Lines 41 through 42:*

- 41 76-5-301.1, as last amended by Chapter 301, Laws of Utah 2001
= 76-5-302, as last amended by Chapter 301, Laws of Utah 2001

Bill Number



HB0086S03

Action Class



S

Action Code



SCRAMD

42 76-5-402, as last amended by Chapter 267, Laws of Utah 1991

4. Page 5, Lines 134 through 140:

- 134 (5) "Dangerous weapon" means:
- 135 (a) any item capable of causing death or serious bodily injury; or
- 136 (b) a facsimile or representation of the item ~~{;and}~~ ,if :
- 137 (i) the actor's use or apparent intended use of the item leads the victim to reasonably
- 138 believe the item is likely to cause death or serious bodily injury; or
- 139 (ii) the actor represents to the victim verbally or in any other manner that he is in
- 140 control of such an item.

5. Page 5, Line 147:

147 (f) sodomy on a child ~~{;}~~ Section 76-5-403.1;

6. Page 19, Line 563:

563 Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,
Commitment and Treatment of Mentally Ill Persons, except as

7. Page 20, Lines 586 through 587:

586 [~~(10)~~] (14) any attempt to commit a felony listed in
{~~Subsections~~} Subsection [(5),(6),and(7)] (6),
587 (8), or (10).

8. Page 20, Line 589 through Page 21, Line 617:

589 76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior
590 felony convictions.
591 (1) As used in this section:
592 (a) "Type one Prior sexual offense" means:
593 (i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
594 (ii) sexual exploitation of a minor, Section 76-5a-3;

Bill Number



HB0086S03

Action Class



S

Action Code



SCRAMD

595 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
 596 (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through
 597 (iii); or
 598 (v) an offense in another state, territory, or district of the United States that, if
 599 committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through
 600 (iv).
 601 (b) " ~~{Type two sexual}~~ Sexual offense" means:
 602 (i) an offense that is a felony of the second or third degree, or an attempted offense,
 603 which attempt is a felony of the second or third degree, described in Title 76, Chapter 5,
 604 Part 4.
 605 Sexual Offenses;
 606 (ii) sexual exploitation of a minor, Section 76-5a-3;
 607 (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
 608 (iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii);
 609 or
 610 (v) an offense in another state, territory, or district of the United States that, if
 611 committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through
 612 (iv).
 613 (2) Notwithstanding any other provision of law, the maximum penalty for a ~~{type~~
 614 ~~two}~~
 615 sexual offense is increased by five years for each ~~{prior}~~ conviction of the defendant
 616 for a ~~{type~~
 617 ~~one}~~ prior sexual offense that arose from a separate criminal episode, if the trier of
 618 fact finds that:
 619 (a) the defendant was convicted of ~~{the type one}~~ a prior sexual offense;
 620 and
 621 (b) the defendant was convicted of the ~~{type one}~~ prior sexual offense
 622 described in Subsection
 623 (2)(a) before the defendant was convicted of the ~~{type two}~~ sexual offense for which
 624 the
 625 defendant is being sentenced.
 626 (3) The increased maximum term described in Subsection (2) shall be in addition to,



617 and consecutive to, any other prison term served by the {person} defendant .

9. *Page 21, Line 645 through Page 22, Line 646:*

645 (6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 11. Section 76-5-302 is amended to read:

76-5-302. Aggravated kidnapping.

(1) An actor commits aggravated kidnapping if the actor, in the course of committing unlawful detention or kidnapping:

(a) possesses, uses, or threatens to use a dangerous weapon as defined in Section 76-1-601; or

(b) acts with intent:

(i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct;

(ii) to facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;

(iii) to hinder or delay the discovery of or reporting of a felony;

(iv) to inflict bodily injury on or to terrorize the victim or another;

(v) to interfere with the performance of any governmental or political function; or

(vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(2) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

(a) Section 76-5-301, kidnapping; or

(b) Section 76-5-304, unlawful detention.

(3) Aggravated kidnapping is a first degree felony punishable by {imprisonment for

Bill Number



HB0086S03

Action Class



S

Action Code



SCRAMD

~~an indeterminate term of not less than 6, 10, or 15 years and which may be for life; }~~ a term of imprisonment of:

(a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the aggravated kidnapping the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (3)(a) or (b):

(i) ten years and which may be for life; or

(ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c).

(6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Renumber remaining sections accordingly.

10. Page 24, Lines 713 through 714:

713 ~~{(f)}~~ (a) ten years and which may be for life; or

Bill Number



HB0086S03

Action Class



S

Action Code



SCRAMD

714 ~~{(f)}~~ (b) six years and which may be for life.

11. Page 26, Lines 785 through 787:

785 (b) except as provided in Subsection (2)(c) or (3), life without parole, if the trier of
fact

786 finds that during the course of the commission of the sodomy upon ~~{of}~~ a child the
defendant

787 caused serious bodily injury to another; or

12. Page 27, Line 812:

812 punishable by a term of imprisonment of not less than ~~{1}~~ one year nor more
than 15 years; or

13. Page 30, Line 916:

916 (b) for purposes of Subsection (2)(a) or ~~{(2)}~~ (b):

14. Page 25, Lines 749 through 752:

749 76-5-403. Sodomy -- Forcible sodomy.

750 (1) A person commits sodomy when the actor engages in any sexual act with a person

751 who is at least 14 years of age ~~{or older}~~ , but younger than 18 years of
age, involving the genitals of one person and mouth or anus of

752 another person, regardless of the sex of either participant.

Respectfully,

Gregory S. Bell
Committee Chair

Voting: 5-0-2

3 HB0086.SCI.WPD jdhowe/JDH TRV/MDA 2/21/07 9:41 am

Bill Number



HB0086S03

Action Class



S

Action Code



SCRAMD